



COMPETITION WATCH



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Commonwealth Competition Council Members

Gubernatorial appointments

The Honorable Sandra D. Bowen
Richard D. Brown
Beverly B. Davis
Dr. Earl H. McClenney, Jr.,
ELECTED VICE CHAIRMAN
Roy Page
Michael N. Pocalyko
Sara Redding Wilon

Senate Privileges and Elections Committee appointments

Senator Emmett W. Hanger, Jr.,
ELECTED CHAIRMAN
Senator John C. Watkins

Members of the Small Business Commission

Robert A. Archer
Bernice E. Travers

Speaker of the House of Delegates appointments

Delegate Allen L. Louderback
Delegate Thomas D. Rust
Edgardo Marquez
David M. Zobel

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LATE BREAKING NEWS...

Competition Council has a full complement of its 15 members

Senate Joint Resolution 383, patroned by Senator Kevin G. Miller, representing the 26th Senatorial District, has passed the House of Delegates and the Senate of Virginia and included four gubernatorial appointments to the Commonwealth Competition Council. Governor Mark R. Warner has appointed the following to the Council:

The Honorable Sandra D. Bowen, Secretary of Administration for the Commonwealth of Virginia, to one of four seats held by employees of the executive branch of government. Secretary Bowen fills the unexpired term of former Secretary of Administration G. Bryan Slater. Her term expires June 30, 2003.

Richard D. Brown, Director of the Virginia Department of Planning and Budget, reappointed to one of the four seats held by employees of the executive branch of government. Mr. Brown's three-year term expires June 30, 2005. He was appointed to succeed himself.

Mrs. Beverly B. Davis appointed to one of the five private sector seats on the Council. She succeeds the Rev. Dr. S. Strother Smith, III, an attorney, minister, and King College (Tennessee) lecturer in business, economics and English, whose three-year term ended June 30, 2002. Mrs. Davis is Vice President and Chief Operating Officer of Davis Brothers Construction Company, Inc., with offices in Richmond and Atlanta. Her three-year term expires June 30, 2005.

Mrs. Sara Redding Wilson, Director of the Virginia Department of Human Resource Management, appointed to a three-year term ending June 30, 2005. Mrs. Wilson occupies one of the four executive branch seats on the Council and succeeds Howard Lee, a former Administrative Law Judge of the Department of Alcoholic Beverage Control.

The Commonwealth Competition Council is pleased to welcome these outstanding individuals to assist in carrying out the *Code of Virginia* mandate for the Council.

New Federal A-76 Proposed Revisions

On November 14, 2002, the Federal Office of Management and Budget (OMB) unveiled its long-awaited proposed revisions to OMB Circular A-76, followed on November 19 by public notice and request for comment in the Federal Register.

FULL TEXT OF DRAFT NEW CIRCULAR AVAILABLE

http://www.whitehouse.gov/omb/circulars/a076/a76_111402.pdf.

The proposed changes are significant and have already sparked a vigorous public debate. Angela Styles, Administrator of OMB's Office of Federal Procurement Policy, described the proposed changes at a December 2, 2002, forum in Washington, D.C., jointly sponsored by the National Council for Public-Private Partnerships and the American Bar Association. She explained that OMB's objectives in formulating these revisions included:

- 1 reducing the time required to complete A-76 studies and generate the resulting savings;
- 2 establishment of a more level playing field by treating the Federal agency offers more like private offers; and
- 3 increasing accountability for the Federal offers, both during and after the competitive process.

The new OMB proposals would make major strides toward accomplishing the OMB objectives. They include:

OBJECTIVE 1

establishing a 12-month timeline for completion of A-76 competitions (up to 18 months for large, complex studies);

OBJECTIVE 2

annual assessment of performance by the winning competitor, public or private, automatic recompetition at the end of the "contract" term; and

OBJECTIVE 3

trial utilization of the Cost-Technical Tradeoff process recommended by the Commercial Activities Panel Report of April 30, 2002.

Government Most Efficient Organizations which did not achieve the performance levels of the solicitation could be terminated, just as a contract with a private sector provider could be terminated under parallel circumstances.

Interservice Support Agreements (one Federal agency provides support to another on a reimbursable basis)

Another major proposal is that Interservice Support Agreements, by which one Federal agency provides support to another on a reimbursable basis, would be opened to public-private competition. This would create a whole new avenue for savings, since many of the existing agreements have never been subject to review on a total cost basis, as would occur under A-76. Agencies would also be required to set up more formal structures to support their competitive sourcing efforts. If implemented, these proposals would appreciably impact the dynamics of government, thus creating a more competitive, entrepreneurial environment for performance of commercial activities.

As with any radical departure from existing rules, the OMB proposals have stirred controversy. The public comment period closed December 19, 2002. As OMB sorts through the reputed mountain of comments, both government and industry await with great interest the final revised Circular, which may be issued as early as February 2003.

National Council for Public-Private Partnerships presents Virginia Senator Walter A. Stosch their 2002 Leadership Award

On November 20, 2002, the National Council for Public-Private Partnerships presented the 2002 Leadership Award to Senator Walter A. Stosch of the Commonwealth of Virginia. NCPPP Executive Director Richard B. Norment made the presentation to Stosch in the Old Senate Chamber in the Virginia Capitol. "NCPPP's Leadership Award is a unique distinction – only one of these awards is being given this year," said Norment. "It is presented as a means of encouraging dynamic leadership and innovative approaches in promoting the concept of public-private partnerships as a viable option as an answer to significant public needs. Senator Stosch has exemplified this standard of leadership."

Stosch was recognized as being a leader in public-private partnerships for his influence with statutes in Virginia that utilize public-private partnerships to meet the needs of its citizens. This includes the Public-Private Transportation Act of 1995, which allows state and local governments to receive unsolicited proposals for public-private partnerships to develop Virginia's transportation infrastructure. The second act Stosch initiated was the Public-Private Education Facilities and Infrastructure Act of 2002. This provides the concept of public-private partnerships to be recognized for all state and local infrastructure needs and also provides over \$70 million annually in federal tax exempt financing for K-12 public-private partnerships.



The Honorable Walter A. Stosch,
Senator representing the 12th Senatorial District,
accepting the 2002 National Leadership Award
presented by Richard B. Norment,
Executive Director,
National Council for Public-Private Partnerships

"I am very honored to have received this award today and to have been a part of such innovative legislation which will surely make our Commonwealth stronger," said Senator Stosch. "Not only will these bills allow several major transportation projects to continue moving forward, but they will also reach school kids in both urban and rural areas and give local school boards more tools and more options to address capital needs creatively and economically...Public-private partnerships are not a panacea, nor the answer to every project, but they are options that in some unique cases will work very well," said Stosch regarding the projects that have been initiated through both acts.

The Senator's commitment to public-private partnerships goes back prior to his being elected to the Virginia Legislature. Part of his experience included an effort to bring together public and private resources to solve a local water/wastewater infrastructure problem. Stosch said, "I have always been interested in bringing together public and private entities. What these bills do is allow the creativity and ingenuity of the private sector to come forward." Stosch has been promoting the idea of public-private partnerships for over 20 years.

An Interview with Senator Stosch by Ric Norment



Questions asked by Ric Norment, Executive Director, National Council for Public Private Partnerships

This award is in recognition of your legislative success in support of PPPs. What's been the driving force behind your efforts?

Response by Senator Walter A. Stosch, recipient of the 2002 National Leadership Award

We need a set of alternative tools in the toolbox for state and local governments, other than the rigid requirements of the competitive sealed bid process. That process requires the agency to define its needs up front, which isn't always easy to do, and then submit it as a solicitation for bids. With the two PPP bills, it allows an alternative of allowing unsolicited proposals. What this does is allow the creativity and ingenuity of the private sector to come forward. The option of combining projects to address all the public's needs in a comprehensive way is really a more effective approach. With school and education construction, partnering with others who will share the risk can generate other sources of revenues, such as rentals from a multipurpose facility for a wider range of uses. This alternative allows the combining of uses in one facility. It allows for savings on construction costs, and at the same time, guaranteeing services in the same facility. An example under the PPTA, one of the success stories, is a major highway built in part by a PPP, and the builder guaranteed the maintenance of that road for 20 years. Intuitively, you can understand why the builder will pay particular attention to the quality of the road if they have to maintain that same road for 20 years. But more importantly, that same project is several years ahead of schedule and \$47 million under budget. PPPs are not the panacea, not the answer to every project, but they are options that in some unique cases will work very well.

Questions asked by Ric Norment, Executive Director, National Council for Public Private Partnerships	Response by Senator Walter A. Stosch, recipient of the 2002 National Leadership Award
What are some of the criticisms you experienced and how did you overcome?	In 1995, when the first bill was introduced, it was too comprehensive. But working with Governor Allen and his Secretary of Transportation, we narrowed it to only transportation projects. Smaller contractors were afraid they would lose out to larger companies. This has proven to not be the case under the PPTA. When we got to 2002, we decided to expand into educational and other facilities. The same questions came up – the concern that the larger companies would monopolize the business. We invited all who had issues and concerns to come forward and be part of the development of the legislation. We accommodated many of their concerns and did in fact change the legislation. This actually did strengthen the bill. The experience with the PPTA and accommodation with stakeholders reduced the opposition.
Were the two bills a long-term strategy or more of a response to separate issues?	The 2002 PPEA bill was built on the experience of the 1995 PPTA act. This year's bill also allowed us to fine tune some things in the first bill. PPEA includes a bias for competitive sealed bids, but solicitors can justify use of the provisions for competitive negotiations on the basis of private capital, project planning, risk sharing or some other financial advantage. In passing the 2002 bill, we added these same provisions to the PPTA. The two bills were not part of some long term plan, but rather the result of my philosophy. Before election to office, I was in an active CPA practice with clients in the water/wastewater industry. We came up with some interesting ways to use the tax codes to improve the financing options under a partnership, which the county executives favored. However, the Board of Supervisors rejected the proposal because of fears of private ownership of the water/wastewater lines. It was a good idea whose time had not come. But that was the start of my interest in bringing together public and private entities.
How did you gain majority support in both chambers?	By lots of discussions with key people. We listened to their concerns and tried to accommodate them. As a result, the legislation was made into a better bill. We also allowed a local law firm to aggressively work in support of the bill. When introduced in Senate, there was a majority already in support of the bill, and we followed much the same process in the House of Delegates.
What do you foresee the level of public-private partnerships in the future?	There are some opportunities for long-term maintenance approaches using PPPs – one that can be more results oriented and not just repair and maintain. For example, the Commonwealth operates a number of old, inefficient boilers in public facilities. Maybe using an approach to allow the design and build of new systems with long-term operating and maintenance agreements might be an area worth examining.

Let's go shopping...

We hope everyone had a great holiday. Have you ever noticed everyone who shops after the holiday and the number of vehicles in the parking lots when you drive by the shopping mall. Everyone likes to see what bargains can be found. The thought occurred that government could be more like us, constantly looking for a bargain. This

brought to mind the Competition Council's "COMPETE" program and its ability to determine how much a government function costs. With this decision support tool, a state government agency or institution can find bargains within the organization. As you can see from the following list, it is not all that difficult. Are you up to the challenge?



In our nation's capital, the Office of Management and Budget broke with tradition and decided to see if private printers could beat the Government Printing Office's deal for printing the 2004 federal budget.

PRINTING

The result---the GPO cut its price 23 percent (\$108,370) and kept the work. That is \$100,000 a year that GPO could have saved us any time they chose, but they never chose to do so until their customer decided to shop.

(read about it at

<http://www.govexec.com/dailyfed/1202/122702b1.htm>)



(read about it at

<http://www.krqe.com/Global/story.asp?s=%20%201048658>)

In Albuquerque, New Mexico, a study showed that the City garage cost \$87.20 to change the oil and lube city vehicles, while private dealerships charge the city only \$36.54 for the same service.

CHANGE THE OIL AND LUBE

City workers argue they should try to improve their operations before the work is sent to Jiffy Lube. But they were not saying that before their customer went shopping.



Back in Washington, D.C., the Forest Service announced plans to compare the work currently done by thousands of its workers to bids by the private sector.

COMPARISON OF WORK CURRENTLY DONE BY THOUSANDS OF WORKERS

The National Federation of Federal Employees Forest Service Council objects, saying "We will lose out. It will not be a real valid comparison. . . . We have no opportunity to [show we can] do better. So, if you have an inefficient organization, which I admit we have, we're going to lose." Hmmm. So, you know you are inefficient. You haven't done anything about it, and in effect are saying "Well, now that you are shopping, we want to change what we offer."

(read about it at

<http://federaltimes.com/index.php?S=1153147>)



In California, the Indio Charter School offers mostly Hispanic students the best education in town, beating the 13 local public schools average test scores by a handsome margin. Moreover, the school offers families, many of whom visit Mexico on the weekends, a schedule of four longer days rather than the tradition five days, actually teaching for 110 extra minutes of instruction each week.

LONGER SCHOOL DAY SCHEDULE



Now the County is using the charter school's schedule as an excuse to try to destroy it. Never mind that the schedule has been in place for years. The County only acted when the charter's performance showed up the local public schools. While others whose customers have started to shop have worked to improve what they offer, Riverside County decided to try to eliminate the competition.

(read about it at

<http://www.rppi.org/charterschoolstory.html>)



Back again to our nation's capital where the Post Office is learning about shopping. After September 11th, USPS was no longer allowed to ship heavy mail on commercial airlines.

NEW POLICY ON SHIPPING HEAVY MAIL ON COMMERCIAL AIRLINES

So they switched to FedEx, with the unexpected result of cost savings and significantly higher customer satisfaction. (Oddly, they couldn't say how much they are saving. Way to know your business, guys!!!) Too bad the Post Office wasn't really acting like a business and shopping for the best deal before September 11th.

(read about it at

<http://federaltimes.com/index.php?S=1153150>



And last, but not least, in Philadelphia the nation has watched the city's controversial decision to turn over operation of many of its worst performing schools to Edison Schools Inc. It turns out Edison has a benchmark testing program that provides continuous feedback on each student's academic weakness to teachers so they can fine tune their lessons.

BENCHMARK TESTING PROGRAM

It took the other public schools in Philly almost no time flat to realize this is a good idea and began implementing a similar system. Too bad the public schools weren't looking for ways to fine tune their lessons until their customers started to shop around.



(read about it at <http://educationweak.blogspot.com>)



BEST BARGAIN IN STATE GOVERNMENT

We don't want to beat a dead horse, but you have to see the same thing we do. There is a trend here. When the government shops smart, the taxpayers benefit. We'd like to see them shopping like it's the post-Christmas sale season all year long.

The Competition Council will be happy to help you unwrap a new copy of its "COMPETE" program and help you with the assembly (training).

Please contact us at competition@state.va.us.

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